

1 would. That's the short email with the chart,  
2 the numbers attached to it.

3 A This one?

4 MR. CARROLL: May I approach, Your  
5 Honor, and help him?

6 JUDGE SIPPEL: Sure.

7 THE WITNESS: This one?

8 MR. CARROLL: This one.

9 THE WITNESS: Okay.

10 BY MR. CARROLL:

11 Q Do you see in 726, you're on the  
12 same distribution list with Mr. Garland. Do  
13 you see that?

14 A Yes.

15 Q And this is the one that had the  
16 best, most likely, and worst case scenarios.

17 A You had said "spoken to," I'm  
18 sorry. I didn't know what you were referring  
19 to. You said "When you spoke to Mr. Garland  
20 about it." I'm not sure --

21 Q Did you not speak to Mr. Garland  
22 about this issue shortly after joining the

1 company?

2 A I don't know. I'm sure that we  
3 spoke about sales at some point.

4 Q You would have been concerned. I  
5 mean, your comment -- these are your words --  
6 is that you were "quite angry, actually," and  
7 "the old plan was a complete fiction." And  
8 you say the guy -- you don't know who the ad  
9 sales guy before Frank was -- that's Frank  
10 Garland you're referring to. Is there any  
11 doubt in your mind that you spoke to Mr.  
12 Garland after looking at your own email here?

13 A No, I'm just not sure what you  
14 were -- which conversation you were talking  
15 about. You're jumping around between dates.  
16 That's all. I just wanted to make sure.

17 JUDGE SIPPEL: No, please. If you  
18 can't understand a question, let us know. Can  
19 you understand the question?

20 THE WITNESS: Now, understanding  
21 what you're trying to say, go ahead and --

22 JUDGE SIPPEL: We only have that

1       one document. Is that right, Mr. Carroll,  
2       that we're looking at 726 right now?

3               MR. CARROLL: Yes.

4               JUDGE SIPPEL: We're not running  
5       around to the other ones.

6               THE WITNESS: So not the 22.

7               MR. CARROLL: 726.

8               JUDGE SIPPEL: No. Stay with 726,  
9       that's the question.

10              THE WITNESS: Okay.

11              MR. CARROLL: You spoke to Mr.  
12       Garland about what's discussed in Exhibit 726?

13              THE WITNESS: I don't know that I  
14       did, but I don't know that I didn't.

15       BY MR. CARROLL:

16              Q       Do you deny that it's because of  
17       what you saw in 726 on June 22nd that you  
18       wrote a week later the old plan was a complete  
19       fiction, you're angry, and the sales guy  
20       before Frank should be drawn and quartered?

21                    That's what you were writing  
22       about, isn't it?

1           A       I don't know if it was this plan  
2           or another plan. I don't know what plan it  
3           was.

4                       But I won't argue that at some  
5           point I spoke to the head of sales, and it  
6           seems to me fairly clear that there was a lack  
7           of precision in terms of their projections,  
8           and that he was not doing very well at his  
9           job.

10           Q       Well, sir, is there any other plan  
11           that you can think of that you thought was a  
12           complete fiction when you arrived at Tennis  
13           Channel?

14           A       I don't know how many plans they  
15           had, or which one we're talking about. It was  
16           in 2005, days after I got here. And that was  
17           six years ago, and the business looks very,  
18           very different than today.

19           Q       Let me see if you remember  
20           something else you wrote. Now, I'm still on  
21           the exhibit that has your language, the drawn  
22           and quartered language. Do you have that,

1       sir?

2                   JUDGE SIPPEL: That's 709.

3                   THE WITNESS: Yes, I do.

4                   MR. CARROLL: Okay. You have 709?

5                   THE WITNESS: I do.

6                   MR. CARROLL: This is -- these are  
7       your words. Right after you wrote about that,  
8       you have this interesting sentence at the end  
9       of that paragraph.

10                   "It's the right play, because it's  
11       a bet on our own skills in building a  
12       monetizable brand instead of playing chicken  
13       with the cable industry and hoping we'll dupe  
14       them one more time.".

15                   Do you see that?

16               A       Yes.

17               Q       Those are your words. Yes?

18               A       Yes.

19               Q       What did you mean when you said  
20       "dupe the cable industry one more time"? Dupe  
21       means to trick or fool, can we agree about  
22       that?

1           A       Yes, I do agree with that.

2           Q       Okay. In what sense were you  
3 discussing whether you would trick or fool the  
4 cable industry one more time?

5           A       I have no idea -- at 11:20 at  
6 night, days after I got here, speaking to the  
7 president of the company who had not had  
8 experience in this business -- what I was  
9 trying to say, or what I was trying to  
10 illustrate.

11                   I don't argue that the word dupe -  
12 - I think I'm suggesting that we shouldn't, or  
13 that nobody should. I don't know who had in  
14 the past, or what I was talking about.

15           Q       Had you duped the industry in the  
16 past? You say "one more time." Had you  
17 succeeded in duping them previously?

18           A       For all I know, I was talking  
19 about others who had done it. I have no idea  
20 what this is referring to specifically.

21           Q       Well no, you say "We'll dupe  
22 them." W-E-apostrophe-L-L. Do you see that?

1       You don't say "They'll," you say "We'll dupe  
2       them."

3                   Had you duped the cable industry  
4       previously?

5           A       Not to my knowledge, no.

6       Absolutely not. Quite the contrary.

7           Q       When you learned about this  
8       completely fictional -- your words -- business  
9       plan, did you go to Comcast and tell them that  
10      you'd discovered this?

11          A       I don't know.

12          Q       You never told my client, did you?

13          A       I'm not sure what I believed or  
14      didn't believe was the case, again, from an  
15      11:20 email. Clearly I was working too late  
16      in the middle of June, in my earliest days  
17      there. What I did do is try to build a better  
18      service for your client.

19          Q       When you were trying -- and my  
20      client does appreciate that, let me tell you.  
21      But when you were trying to do that, were you  
22      honest with my client about what your real

1       projections were, the real projections for  
2       your advertising sales? Yes or no.

3               A       I will always be honest in terms  
4       of what real projections and sales are, to the  
5       best of my ability.

6               Q       When the MFN offer was made in  
7       2006 to my client, my client asked for due  
8       diligence and information to understand your  
9       business model, didn't it?

10              A       I would assume -- yes.

11              Q       Did you give them the honest  
12       information about what your numbers were, or  
13       did you give them inflated numbers?

14              A       We would give them our plan as it  
15       existed.

16              Q       That wasn't my question. Did you  
17       give them the accurate numbers based upon Mr.  
18       Garland's work that you had referred to when  
19       you were describing the previous plan as a  
20       complete fiction? Did you give my client  
21       those new, revised numbers?

22              A       Well, I would expect that we gave



1       them numbers that were different than the ones  
2       that I was referring to on June 29th of 2005.

3               Q       And you gave them higher numbers  
4       than your own internal estimates, even your  
5       best case estimates. You gave them higher  
6       numbers, didn't you? Correct?

7               A       I don't know that to be the case  
8       at all.

9               Q       Do you deny that, or you just  
10       don't remember?

11              A       I don't -- I think we gave them  
12       the numbers that they requested.

13              Q       But no, they wouldn't know to ask  
14       for Mr. Bellamy's internal numbers. They  
15       would just ask you for -- isn't this how it  
16       worked? They asked you "Could we see your  
17       business projections," and you gave them what  
18       you selected to give my client, correct?

19              A       I presume we gave them what was  
20       our plan and our best projections at the time.

21              Q       And do you remember that your  
22       projections you gave my client were outside

1 the range that Mr. Bellamy had identified as  
2 even your best case? They were still higher  
3 numbers that you gave.

4 A Well, I --

5 Q Yes or no.

6 A I don't recall what we gave or how  
7 they compared to numbers as they existed prior  
8 to me getting to the company or me just  
9 arriving. I would recall that we would give  
10 them our best estimates as to where we were at  
11 that time.

12 Q Did you ever tell the Board in  
13 2005 your own frank assessment that you made  
14 at 11:00 on this evening, that the old plan  
15 was a complete fiction and that the numbers  
16 were 70 to 90 percent off? Did you ever tell  
17 the Board that?

18 A I'm quite sure I had discussions  
19 with the Board about the fact that there were  
20 inaccuracies. I don't recall specifically.

21 Q You don't have a recollection one  
22 way or the other?

1           A       I don't.

2           Q       Let me ask you about another piece  
3 of your testimony, quickly here. You  
4 testified in your direct testimony -- Your  
5 Honor, this is the direct written statement of  
6 the Witness. I'm going to reference footnote  
7 3, which is on page 5.

8                   And actually, one last question on  
9 what I just asked you. You don't blame  
10 Comcast for any of the problems you had with  
11 your complete fiction business plan and having  
12 to draw and quarter your own advertising  
13 person, correct?

14          A       I don't blame Comcast for that. I  
15 don't recall blaming anyone for that, because  
16 I'm not sure why it happened, other than  
17 apparently an advertising executive.

18          Q       Okay. You're not claiming that  
19 Comcast discriminated against you in some way  
20 in 2005 in connection with this episode,  
21 correct?

22          A       No.

1           Q       You agree with me that if you had  
2       presented inflated numbers to Comcast that you  
3       would be the one guilty of discrimination, if  
4       you did that?

5           A       Discrimination?

6           Q       Yes. Do you think it would be  
7       wrong for you -- maybe worse than  
8       discrimination on your side -- if you had,  
9       knowing the truth about your own forecasts,  
10      actually given my client inflated numbers?

11                 JUDGE SIPPEL: In fairness to the  
12      Witness, I don't think that's discrimination.  
13      I think there's a lot of words that apply, but  
14      not that one.

15                 MR. CARROLL: That's a fair point.  
16      Do you think it would be at least as bad or  
17      worse than discrimination if you had done that  
18      to Comcast, given them inflated numbers that  
19      you knew were inflated from your own internal  
20      work.

21                 THE WITNESS: I think that's a  
22      theoretical question that I'm not equipped to

1       answer whether discrimination and inaccurate  
2       projections, or inflated numbers, are the same  
3       thing. They seem to be different. So I'm not  
4       sure how to answer that question.

5               JUDGE SIPPEL: That's a good  
6       answer.

7               MR. CARROLL: Okay. And you don't  
8       remember what numbers you gave to Comcast, is  
9       that right?

10              THE WITNESS: When I gave them --  
11       at what time?

12              MR. CARROLL: The 2006 MFN offer.

13              THE WITNESS: I do not.

14              MR. CARROLL: Now I want to go to  
15       footnote 3, Your Honor, of the Witness's  
16       direct statement.

17              You have a statement where you  
18       write "DirecTV and Dish each own minority  
19       interests in Tennis Channel, but Tennis  
20       Channel's carriage level on those MVPDs were  
21       not negotiated as equity for carriage deals."

22              JUDGE SIPPEL: This is

1 confidential stuff we're reading, but --

2 MR. CARROLL: I think there's no  
3 objection to this. We've already kind of gone  
4 through this in the openings, I think.

5 JUDGE SIPPEL: I think -- is there  
6 anybody here, by the way, who's --

7 MR. PHILLIPS: It's fine.

8 JUDGE SIPPEL: Okay. There's no  
9 objection, so we can just go forward. Fine.

10 MR. CARROLL: Thank you. Do you  
11 see the statement you have that they were not  
12 negotiated as equity for carriage deals?

13 THE WITNESS: Yes.

14 BY MR. CARROLL: .

15 Q Is that a true statement?

16 A Yes.

17 Q You deny that you negotiated  
18 equity for carriage deals with DirecTV and  
19 Dish. Is that your testimony?

20 A Yes.

21 Q Okay. You're sure about that?

22 You're sure that's your testimony, before I

1 start showing you documents? Your sworn  
2 testimony here is that you deny that you  
3 negotiated equity for carriage deals with  
4 DirecTV and Dish. That's your testimony?

5 A Yes.

6 MR. CARROLL: Your Honor, may I?

7 JUDGE SIPPEL: Please.

8 MR. CARROLL: This is Comcast  
9 Exhibit 725.

10 JUDGE SIPPEL: Thank you.

11 (Whereupon, the document referred  
12 to was marked for identification as Comcast  
13 Exhibit 725.)

14 JUDGE SIPPEL: I'll give you a  
15 heads-up on this, Mr. Carroll. At some point,  
16 I want to go back and find out who all these  
17 people are, June 22, 2005. Garland, Frank,  
18 Rider, et cetera.

19 MR. CARROLL: I promise, Your  
20 Honor -- if Your Honor will be patient with  
21 me, I just want to do this equity for carriage  
22 line --

1 JUDGE SIPPEL: Well, you can do  
2 that.

3 MR. CARROLL: -- and then I will  
4 loop back and pick that up.

5 JUDGE SIPPEL: That's fine. Thank  
6 you very much.

7 MR. CARROLL: Thank you, sir.  
8 This is a one page document, Bates number  
9 TTC00037894. It's a draft Board minute for  
10 the Tennis Channel, November 18, 2005. Do you  
11 see this?

12 THE WITNESS: Yes.

13 BY MR. CARROLL:

14 Q This is a pretty formal document,  
15 your Board minutes, right? These are drafts  
16 of them. Yes?

17 A Ye.

18 Q Okay. Right in the middle it says  
19 you gave opening remarks to the Board and  
20 explained, among other things, the overall  
21 status of the negotiations with EchoStar --  
22 EchoStar is Dish, correct?



1           A       That's correct.

2           Q       Negotiations with Dish for an  
3 equity for carriage deal. Have I read it  
4 correctly?

5           A       You have read it correctly.

6           Q       Do you still deny that you did  
7 what this document says you did, namely  
8 negotiate with EchoStar for an equity for  
9 carriage deal?

10          A       Yes.

11                 MR. CARROLL: Let me show you  
12 another exhibit. Your Honor, may I approach?

13                 JUDGE SIPPEL: Please do.

14                 MR. CARROLL: This is Exhibit 620.  
15 This is already in evidence, Your Honor.

16                 JUDGE SIPPEL: Is this 620?

17                 MR. CARROLL: 620. Okay. You  
18 have Exhibit 620 in front of you, sir?

19                 THE WITNESS: I do.

20                 BY MR. CARROLL:

21           Q       This is an executive summary --  
22 pretty important document, yes? For the USTA.

1       That stands for United States Tennis  
2       Association, is that right?

3               A       It does.

4               Q       All right. Pretty important, an  
5       executive summary for them?

6               A       I suppose so.

7               Q       You wouldn't speak loosely here,  
8       you would speak accurately about what kind of  
9       a transaction it was?

10              A       Yes.

11              Q       Turn over, if you would, please,  
12       to the document with the Bates number 82144,  
13       that has a number 3 at the bottom in the  
14       middle, and it says TTC funding history at the  
15       top.

16                      Do you see, sir?

17              A       I do.

18              Q       Bottom paragraph -- Your Honor,  
19       are you with us? I don't want to go too fast.  
20       It should say page 3, right in the bottom  
21       middle of the page.

22                      JUDGE SIPPEL: Page 3, right in

1 the middle of the bottom of the page.

2 MR. CARROLL: Right. And we are  
3 going to do the last paragraph, Your Honor.

4 JUDGE SIPPEL: "In February of  
5 2006?"

6 MR. CARROLL: Exactly. "TTC,"  
7 that's Tennis Channel, "entered into an equity  
8 for carriage agreement with EchoStar's Dish  
9 Network." Do you see that language?

10 THE WITNESS: I do.

11 BY MR. CARROLL:

12 Q You still deny that you entered an  
13 equity for carriage agreement. Is that your  
14 testimony?

15 A Yes.

16 Q Okay. Let me show you another  
17 document. Do you claim that these words are  
18 not yours in the past two documents I've been  
19 looking at, that because you didn't write  
20 these, they're poorly phrased in using this  
21 phrase, "equity for carriage"?

22 A I don't know whether they're mine

1 or somebody else's, but I don't think they're  
2 poorly phrased. I think they're using a  
3 generalized term to describe something that I  
4 think you're trying to make a point that's  
5 very specific.

6 Q Well, equity for carriage deal is  
7 a term of art that's being used on these pages  
8 very plainly, yes? It says "equity for  
9 carriage deal" is the deal that you did with  
10 Dish, yes?

11 A I think it is here being used as a  
12 shorthand for --

13 Q So you disagree. You think the  
14 language is sloppy.

15 A I just think it's shorthand.

16 Q You wouldn't use that language?

17 A I might.

18 Q You might?

19 A It's shorthand.

20 Q Doesn't equity for carriage mean  
21 you give them equity in exchange for them  
22 carrying you?

1           A       It might, it might not.

2           Q       It might or it might not?

3           A       Yes.

4           Q       Sir, isn't that exactly what it  
5 means in these documents I've just shown you?  
6 You gave them equity, and they gave you  
7 carriage, and it was an equity for carriage  
8 deal. Correct?

9           A       Not necessarily.

10          Q       Not necessarily. So are you  
11 denying that's what these documents mean in  
12 saying equity for carriage, or are you  
13 agreeing to it, or are you saying you don't  
14 know?

15          A       I'm saying that that is a general  
16 term that's being used here for people who are  
17 not necessarily -- the USTA and others who may  
18 or may not be familiar with the specifics of  
19 the cable business, and so it's a shorthand  
20 because it's easy for people to understand.

21                   But in terms of the way that this  
22 deal really came about, and what I think we're

1 talking about today, it was a different  
2 exchange.

3 Q It's your shorthand, this term,  
4 equity for carriage, isn't it?

5 A Yes.

6 Q You used it to describe your  
7 strategy for getting Dish and DirecTV deals,  
8 didn't you?

9 A That is the shorthand that I used.

10 Q And you used the shorthand "equity  
11 for carriage" to tell people you were going to  
12 offer them equity, and in exchange they were  
13 going to give you carriage. Isn't that right?

14 A Not necessarily.

15 Q Not necessarily. Sometimes the  
16 term meant that and sometimes it didn't? Is  
17 that your testimony?

18 A Correct.

19 MR. CARROLL: Your Honor, may I  
20 approach with another document?

21 JUDGE SIPPEL: Please, sir.

22 MR. CARROLL: This is Exhibit 701,

1       sir. Do you recognize this, sir, Exhibit 701?  
2       For the record, Bates number TTC00090655.

3               JUDGE SIPPEL: This is not in  
4       evidence yet, though, is it?

5               MR. CARROLL: It is not, Your  
6       Honor. 656, with attachments 67839 through  
7       846.

8               (Whereupon, the document referred  
9       to was marked for identification as Comcast  
10      Exhibit 701.)

11              MR. CARROLL: Do you remember you  
12      gave a report to the Board, one of the --  
13      shortly after you arrived at Tennis Channel,  
14      one of the things you started as a practice  
15      was to give the Board a monthly report. Do  
16      you remember that, sir?

17              THE WITNESS: Yes.

18      BY MR. CARROLL:

19              Q       Okay. Do you remember that  
20      attached here, starting on the third page, is  
21      your first such report, your report for May  
22      2005 to the Board? Do you see that?

1           A       Yes.

2           Q       And these are your first executive  
3       comments to your Board after joining Tennis  
4       Channel, so a pretty important set of  
5       comments, right?

6           A       Yes.

7           Q       And you start by saying -- Your  
8       Honor, this is on page 839 are the last three  
9       numbers in the corner.

10           JUDGE SIPPEL: I'm with you.

11           MR. CARROLL: It says "Executive  
12       comments." You start by saying "It's a time  
13       of evaluation and change at Tennis Channel."  
14       Do you see that?

15           THE WITNESS: I do.

16       BY MR. CARROLL:

17           Q       You say "It's clear," in the next  
18       paragraph, "that current shortfalls in  
19       distribution and ad sales are not likely to be  
20       remedied without a substantive strategic  
21       shift." Do you see that?

22           A       I do.



1 Q That means new strategies?

2 A Yes.

3 Q All right. So let's see what your  
4 new strategy is. Next you say, in the next  
5 paragraph, "weakness in the current model."

6 Is this word, "weakness," here  
7 your way of referring to the complete fiction  
8 we saw in your email a short while ago?

9 A I'm not sure at this time. To me,  
10 the substantive shift and the change had to be  
11 in the quality -- I know that at least one,  
12 and the major focus for me, was in the quality  
13 of the service.

14 If we were going to expect to have  
15 a strong business and offer a strong product,  
16 then we needed to make a substantive shift in  
17 the quality of that product and the  
18 orientation of it, in order to elevate  
19 ourselves.

20 Q Well, let's see what you write  
21 here on this page. After you refer to  
22 weakness in the current model, two paragraphs

1 down you have a paragraph on distribution.

2 And you say "Distribution is, of course, the  
3 first charge."

4 Distribution refers to things that  
5 you're going to do to get more subscribers,  
6 correct?

7 A Yes.

8 Q This is your idea for how to get  
9 more viewers, correct?

10 A It is.

11 Q Okay. Let's see what your ideas  
12 are. In the middle of the page, you say  
13 "Placing Tennis Channel in a sports tier is a  
14 mistake." So you tell the Board the strategy  
15 they've been pursuing before of using the  
16 sports tier is a mistake. Correct?

17 A Yes.

18 Q And then you say "We cannot wait,  
19 as the roll-outs are upon us now.  
20 Additionally, we are actively working on both  
21 the potential for DTH equity for distribution  
22 deals."